

JUN 16 3 48 PM '99 Federal Communications Commission

DA 99-1119

DISPATCHED BY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 97-244
Table of Allotments,	)	RM-9200
FM Broadcast Stations.	)	RM-9235
(Kerrville, Leakey and	)	RM-9236
Mason, Texas) <sup>1</sup>	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: June 2, 1999

Released: June 11, 1999

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by The Stronghold Foundation, Inc. ("Stronghold"), the Commission has before it for consideration the Notice of Proposed Rule Making, 12 FCC Rcd 21780 (1997), seeking the allotment of Channel 291A at Kerrville, Texas. Stronghold filed comments reiterating its intention to apply for Channel 291A at Kerrville, Texas. Kent S. Foster ("Foster") filed two separate counterproposals to which Stronghold responded.<sup>2</sup> BK Radio ("BK") filed comments on the counterproposals.

2. In response to the Notice, Foster filed two separate counterproposals. First, he has requested the allotment of Channel 291A at Leakey, Texas, providing that community with its second local aural service. According to Foster, Leakey has a population of 595 people and is the County Seat for Real County. Leakey is situated near the Frio River, just north of Garner State Park which is one of the more heavily used camping and recreational areas in Texas. Foster states that Leakey has nine churches, a school for grades kindergarten through grade 12, its own Chamber of Commerce, health facilities and a volunteer emergency medical service and fire department and a city water system. The community has various retail stores such as the Ace Hardware and video rental outlet and the Bandera Electric Cooperative has a building in Leakey. Foster states that Leakey is deserving of an additional FM channel as the community is under served. According to Foster, only two FM stations provide service to the entire community of Leakey and there are no AM broadcast stations within 60 kilometers of the community. Foster stated his intention to submit an application for a channel at Leakey.

<sup>1</sup> The communities of Leakey and Mason, Texas, have been added to the caption.

<sup>2</sup> The counterproposals were put on Public Notice on March 2, 1998, Report No. 2259 (RM-9235 was assigned to Leakey, Texas and RM-9236 was assigned to Mason, Texas).

3. In his second counterproposal, Foster requests the allotment of Channel 291A at Mason, Texas, providing a second FM service to the community. In support of the proposal, Foster states that Mason has a population of 2,022 people according to the 1990 U.S. Census and is the County Seat for Mason County. Foster further states that Mason has a fire department, elementary schools and a high school, at least six churches, a community center and city park, and city operated electric, sewer and water systems. The Mason County Airport is approximately 4.8 kilometers southeast of the community of Mason. Foster has stated his intention to file an application for Channel 291A at Mason.

4. Stronghold continues to support the allotment of Channel 291A at Kerrville and urges the Commission to amend the FM Table of Allotments to include the proposed channel. Stronghold believes that there is no need for the Commission to choose between an allotment at Kerrville and the counterproposed allotments at Leakey and Mason as numerous other channels are available for both communities. Stronghold points out that Kerrville with a population of 15,276 people presently has two FM allotments, Leakey with a population of 468 people has a class A FM allotment and Mason with a population of 2,153 people has a class C2 allotment. Stronghold argues that Kerrville with its vastly greater population should be preferred were the Commission forced to select which proposal should be adopted. Stronghold urges that the FM Table of Allotments be amended by the addition of Channel 291A at Kerrville and states that it has no objection to the allotment of alternate channels at Leakey and Mason.

5. BK Radio, an applicant for Channel 249C2 at Mason, Texas (File No. BPH-960823MF), states that along with these comments, it is filing its own Petition for Rule Making which seeks the allotment of two additional channels (273C2 and 288C2) at Mason in order to resolve the current conflict between three mutually-exclusive applications. BK Radio argues that for allotment purposes each FM channel is considered equivalent to every other and as long as other equivalent channels are available which may be allotted to Mason, Foster has no legal right to Channel 291A. In view of its own rulemaking proposal, BK Radio opposes the allotment of Channel 291A at Mason and supports Stronghold's position that alternate channels are available for allotment at Mason.

6. Based upon the above information, we believe the public interest would benefit in providing additional service at Kerrville, Leakey and Mason, Texas. Therefore, we will allot Channel 291A at Kerrville, Texas, as requested by The Stronghold Foundation. Channel 291A can be allotted to Kerrville in compliance with the Commission's Rules without a site restriction.<sup>3</sup> In response to the counterproposals filed by Kent S. Foster, we shall allot Channel 224A to Mason, Texas, and Channel 226A to Leakey, Texas.<sup>4</sup> Since Kerrville, Mason and

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<sup>3</sup> The coordinates for Channel 291A at Kerrville are 30-02-48 NL and 99-08-24 WL.

<sup>4</sup> The coordinates for Channel 224A at Mason are 30-45-00 and 99-14-00. The coordinates for Channel 226A at Leakey are 29-43-42 and 99-45-48.

Leakey are all located within 320 kilometers (199 miles) of the U.S-Mexican border, concurrence of the Mexican Government has been obtained for the allotment of these channels.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 26, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

Community	Channel Number
Kerrville, Texas	222C2, 232C2, 291A
Leakey, Texas	226A, 282A
Mason, Texas	224A, 249C2

8. A filing window for Channel 291A, Kerrville, Texas, Channel 226A, Leakey, Texas, and Channel 224A, Mason, Texas, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10 For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 291A at Kerrville, Texas, Channel 226A at Leakey, Texas, and Channel 224A at Mason, Texas, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau